

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

GENEVIEVE NICOLAY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:05CV2257 AGF
	)	
BUSCH STADIUM CLUB, INC., d/b/a	)	
BUSCH STADIUM CLUB; and	)	
GATEWAY STADIUM, L.L.C., d/b/a	)	
BUSCH STADIUM,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiff's motion to remand this case to the Circuit Court for City of St. Louis.<sup>1</sup> For the reasons set forth below, this motion shall be granted.

Plaintiff, an Illinois resident, filed this action in the Circuit Court of the City of St. Louis, Missouri, against two Missouri corporations. She alleges that she sustained injuries as a result of Defendants' negligence when she slipped and fell while on premises owned by Defendants. Defendants removed the action to this Court under 28 U.S.C. § 1441, which permits removal of any civil action over which federal district courts have original jurisdiction, and 28 U.S.C. § 1332, which provides that district courts have original jurisdiction over actions in which the parties are of diverse citizenship and the amount in controversy exceeds \$75,000. However, under § 1441(b), a defendant may not

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<sup>1</sup> The parties have consented to the exercise of authority by the undersigned United States Magistrate Judge under 28 U.S.C. § 636(c).

remove an action to federal court based on diversity of citizenship if any defendant “is a citizen of the State in which the action is brought.” Thus, the presence of a home state defendant is considered a jurisdictional defect under § 1441(b). Hurt v. Dow Chem. Co., 963 F.2d 1142, 1145 (8th Cir.1992).

Defendants state in the petition for removal that they are citizens of the State of Missouri. By their own admission, Defendants are clearly home state Defendants and, as such, may not remove this action to this Court based on diversity of citizenship. Defendants have failed to respond to Plaintiff's motion to remand and offer no explanation for why they removed this case to this Court despite their obvious Missouri citizenship and in light of the unambiguous language of § 1441(b).

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's motion to remand this case to state court is **GRANTED**. [Doc. #5]

**IT IS FURTHER ORDERED** that this case is **REMANDED** to the Circuit Court of the City of St. Louis, Missouri.

  
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AUDREY G. FLEISSIG  
UNITED STATES MAGISTRATE JUDGE

Dated this 6th day of January, 2006.